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Date:

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TY:

Legend

Distributing =

Controlled =

FSub =

Sub 1 =

Sub 2 =

Business A =

Business B =

a =

b =

c =

d =

e =

f =

g =

h =

i =

i =

k =

l =

m =

n =

o =

p =

q =

r =

s =

t =

u =

v =

State A =

State B =

Country =

DE1 =

DE2 =

Country =

Entities

CE1 =

CE2 =

Transact =

Region =

FSub(1) =

FSub(2) =

Date A =

Date B =

Date C =

Event =

Dear :

This letter is in response to your January 7, 2011 request for rulings as to the US Federal income tax consequences of certain steps of a proposed series of transactions. The information submitted in that request and in subsequent correspondence is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by penalty of perjury statements executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

Moreover, no information provided by the taxpayer has been reviewed and no determination has been made regarding whether the distribution described below: (i) satisfies the business purpose requirement of Treas. Reg. § 1.355-2(b); (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see section 355(a)(1)(B) of the Internal Revenue Code and Treas. Reg. § 1.355-2(d)); and (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation (see section 355(e)(2)(A)(ii) and Treas. Reg. § 1.355-7).

FACTS

The following describes the facts immediately before the Transaction (defined below). Distributing, a publicly traded State A corporation, is the common parent of an affiliated group of corporations that join in filing a consolidated Federal income tax return ("Distributing Group"). Distributing has one class of stock outstanding. Distributing also has publicly traded debt outstanding ("Distributing Public Debt"), of which approximately \$a matures Date A.

Distributing owns 100 percent of the sole outstanding class of stock in Sub1 and b percent of the sole outstanding class of equity interests in Sub2, each a member of the Distributing Group. Sub1 owns the remaining c percent of the equity interests in Sub2. Sub1 is a State B corporation, and Sub 2 is a State B limited liability company ("LLC") that has been classified as a corporation for Federal tax purposes for more than 60 months. Distributing, Sub1, and Sub2 own, respectively, d, e, and f shares, representing in the aggregate 100 percent, of the sole outstanding class of stock in FSub ("FSub Stock"), a Country entity that is classified as a corporation for Federal tax purposes. Sub1 and Sub2 hold no assets other than FSub Stock and receivables from Distributing in an immaterial amount.

FSub had debt to Distributing ("FSub Debt") in the amount of approximately \$g as of Date B. This amount included amounts due under notes and advances, and accrued interest on each. The FSub Debt was incurred to fund Business B activities, as well as for ongoing working capital purposes, and the amount of the FSub Debt fluctuated in the ordinary course of business.

The Distributing Group is engaged in Business A, which Distributing conducts directly, and Business B, which FSub conducts directly. The taxpayer has submitted financial information indicating that the Business A operations conducted by Distributing have had gross receipts and operating expenses representative of the active conduct of a trade or business for each of the past 5 years; and that the Business B operations conducted by FSub have had gross receipts and operating expenses representative of the active conduct of a trade or business for each of the past 5 years.

PROPOSED TRANSACTION

In order to resolve capital expenditure constraints that prevent Business B from pursuing the business development strategies most appropriate for optimal growth and operation, Distributing intends to separate Business B from Business A. Distributing proposes to undertake, pursuant to one overall plan, the following steps, some of which have already been completed ("Transaction"):

- (i) Distributing formed Controlled ("Controlled Formation"). Controlled is a member of the Distributing Group, and before step (xi) Distributing directly owned 100 percent of the sole outstanding class of stock in Controlled ("Controlled Stock").
- (ii) Sub1 converted under State B law to an LLC ("DE1"). Upon this step, DE1 was classified as disregarded as an entity separate from Distributing for Federal tax purposes under Treas. Reg. § 301.7701-2(c)(2). As a result of this step, Distributing was treated as the sole shareholder of Sub2 for Federal income tax purposes.
- (iii) Sub2 elected under Treas. Reg. § 301.7701-3(c) to be classified as disregarded as an entity separate from Distributing for Federal tax purposes ("DE2"). Each of Sub1 and Sub2 is referred to below as a "Liquidating Subsidiary", and each of step (ii) and (iii) as a "Liquidation".
- (iv) FSub formed two Country entities ("CE1" and "CE2"), each of which will be classified as disregarded as an entity separate from FSub for Federal tax purposes under Treas. Reg. § 301.7701-2(c)(2).
- (v) FSub and CE1 Transacted under Region law to form FSub(1). Upon this step, the FSub Stock was converted into common and preferred stock, as follows: The shares of FSub Stock held by Distributing were converted into h shares of FSub(1) common stock with a value approximately equal to the value of the FSub Stock held by Distributing immediately before this step; and the shares of FSub Stock held by DE1 and DE2 were converted into i and j shares, respectively, of FSub(1) preferred stock with a value approximately equal to the value of the FSub Stock held by DE1 and DE2, respectively,

- immediately before this step. The preferred stock will not be nonqualified preferred stock as defined in section 351(g).
- (vi) FSub(1) distributed to Distributing, with respect to Distributing's FSub(1) common stock, k newly issued shares of FSub(1) common stock.
 - (vii) FSub(1) distributed to Distributing a newly issued FSub(1) note ("Note"). The face amount of the Note was equal to \$l.
 - (viii) Distributing contributed to Controlled its shares of FSub(1) common stock, all its interests in DE1 and DE2, and the Note in exchange for m additional shares of Controlled Stock and money in the amount of \$n as described in step (xii) below ("Contribution").
 - (ix) Controlled contributed to FSub(1) the Note in exchange for o newly issued shares of FSub(1) common stock.
 - (x) FSub(1) and CE2 Transacted under Region law to form FSub(2). Upon this step, the p shares of FSub(1) common stock held by Controlled were converted into q shares of FSub(2) Class A common stock with a value approximately equal to the value of the FSub(1) common stock held by Controlled immediately before this step; and the i and j shares of FSub(1) preferred stock held by DE1 and DE2 were converted into e and f shares, respectively, of FSub(2) Class B common stock with a value approximately equal to the value of the FSub(1) preferred stock held by DE1 and DE2, respectively, immediately before this step. Taxpayer represents that steps (iv), (v), (vi), (vii), and (ix), together with this step (x), will qualify as tax-free transactions for Federal income tax purposes.
 - (xi) Controlled engaged in an initial public offering ("IPO"), issuing to public shareholders Controlled Stock, which together with issuances of Controlled Stock pursuant to stock incentive plans, will represent no more than r percent of the Controlled Stock outstanding prior to the Distribution.
 - (xii) Controlled transferred to Distributing a portion of the proceeds from the IPO ("Transferred Proceeds"). In pursuance of the plan of reorganization under which the Spinoff (defined below) will be executed, Distributing will use the Transferred Proceeds to pay Distributing Public Debt maturing Date A. Pending this payment, Distributing deposited the Transferred Proceeds into a segregated account to be used only for paying Distributing Public Debt maturing Date A, with the sole exception that prior to the payment of debt the Transferred Proceeds may be invested in money market or government funds. Any amounts earned on the investment described in the prior sentence will also be used to pay Distributing Public Debt maturing Date A.

The Transferred Proceeds and any amount earned thereon are together referred to as “Section 361(b) Property”, and the use of the Section 361(b) Property to pay Distributing Public Debt is referred to as the “Distributing Debt Retirement”.

- (xiii) Controlled contributed to FSub(2), directly and through DE1 and DE2, the remaining proceeds from the IPO.
- (xiv) FSub(2) transferred to Distributing money in satisfaction of the FSub Debt (“FSub Debt Satisfaction”). The sources of money for the FSub Debt Satisfaction were the proceeds from the IPO contributed in step (xiii) and funds borrowed by FSub(2) on its credit facility.
- (xv) Distributing, as agent for FSub(1), paid to the Country revenue agency FSub(1)’s withholding obligation arising from step (vi).
- (xvi) At least s days after Event, Distributing will distribute pro rata to its public shareholders all of its shares of Controlled Stock, representing at least t percent of the Controlled Stock outstanding, (“Distribution” and, collectively with the Controlled Formation, Contribution, and Distributing Debt Retirement, “Spinoff”). To avoid the administrative difficulties and costs associated with the issuance and maintenance of fractional shares of Controlled Stock, Distributing will distribute any fractional shares to a distribution agent, who will bundle the fractional shares, sell whole shares in the open market, and remit the proceeds to Distributing’s shareholders, net of transaction costs, in proportion to the fractional shares they would otherwise be entitled to.

In addition, there is a transition services agreement for certain services to be provided by Distributing to Controlled following the completion of the IPO (“Transition Services Agreement”). However, the Transition Services Agreement will be terminated on the later of (a) the date of the Distribution or (b) six months after the completion of the IPO (but in any case by Date C). In connection with the IPO, Distributing and Controlled also entered into the following additional agreements: (i) a Separation and Distribution Agreement; (ii) a Registration Rights Agreement, pursuant to which Controlled will agree to provide Distributing with certain registration rights relating to the shares of Controlled Stock owned by Distributing after the IPO; (iii) a Tax Sharing Agreement, providing for the allocation of certain tax liabilities between Distributing and Controlled, including customary indemnities; and (iv) an Employee Matters Agreement, providing for the allocation of certain liabilities and responsibilities relating to Distributing and Controlled’s current and former employees. Pursuant to the Employee Matters Agreement, Controlled and FSub(2) retained or assumed all liabilities relating to all employees of Controlled and FSub(2). These agreements are collectively referred to as the “Transaction Agreements”.

REPRESENTATIONS

The following representations have been made in connection with the Liquidations, as of the time of the Liquidations:

- (a) Each Liquidating Subsidiary, and Distributing, is, has been for the 3 years preceding the adoption of the plan of liquidation for each Liquidation, and will be at all times until the final respective liquidating distribution is completed, classified as a corporation for US Federal tax purposes.
- (b) Distributing, on the date of adoption of the plan of liquidation for each Liquidation, and at all times until the final respective deemed liquidating distribution is completed, will be the owner of at least 80 percent of the single outstanding class of stock in each respective Liquidating Subsidiary.
- (c) No stock in either Liquidating Subsidiary will have been redeemed during the 3 years preceding the adoption of the respective plan of complete liquidation.
- (d) All deemed distributions from each Liquidating Subsidiary to Distributing pursuant to each respective plan of complete liquidation will be made within a single taxable year of each Liquidating Subsidiary.
- (e) As soon as the first deemed liquidating distribution has been made, each Liquidating Subsidiary will for Federal tax purposes cease to be a going concern and for Federal tax purposes the activities of each will cease.
- (f) Each Liquidating Subsidiary will for Federal tax purposes retain no assets following the final deemed liquidating distribution.
- (g) Neither Liquidating Subsidiary will have acquired assets in any nontaxable transaction at any time, except for acquisitions occurring more than 3 years prior to the date of adoption of the respective plan of liquidation.
- (h) Except as described in the Transaction, no assets of either Liquidating Subsidiary have been, or will be, disposed of by either Liquidating Subsidiary or Distributing except for dispositions in the ordinary course of business and dispositions occurring more than 3 years prior to adoption of the plan of liquidation.
- (i) Except as described in the Transaction, the deemed liquidation of each Liquidating Subsidiary will not be preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation of any of the businesses or assets of the respective Liquidating Subsidiary, if persons holding, directly or indirectly, more than 20 percent in value of the Liquidating Subsidiary's equity

- interests, respectively, also hold, directly or indirectly, more than 20 percent in value of the stock in the recipient corporation. For purposes of this representation, ownership will be determined by application of the constructive ownership rules of section 318(a) as modified by section 304(c)(3).
- (j) Prior to adoption of the liquidation plan for each Liquidation, no assets of either Liquidating Subsidiary will have been distributed in kind, transferred, or sold to Distributing, except for (i) transactions occurring in the normal course of business and (ii) transactions occurring more than 3 years prior to adoption of the respective liquidation plan.
 - (k) While under the control of Distributing, each Liquidating Subsidiary will report all earned income represented by assets that will be distributed to its shareholders such as receivables being reported on a cash basis, unfinished construction contracts, commissions due, etc.
 - (l) The fair market value of the assets of each Liquidating Subsidiary will exceed its respective liabilities both at the date of the adoption of the respective plan of complete liquidation and immediately prior to the time the first respective deemed liquidating distribution is made.
 - (m) There is no intercorporate debt existing between Distributing and Sub1 or Sub2 except for debt from Distributing to Sub1 in the amount of \$u and debt from Distributing to Sub2 in the amount of \$v. No intercorporate debt between Distributing and either Liquidating Subsidiary has been cancelled, forgiven, or discounted, except for transactions that occurred more than 3 years prior to the date of adoption of the respective liquidation plan.
 - (n) Distributing is not an organization that is exempt from Federal income tax under section 501 or any other provision of the Code.
 - (o) All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to, the proposed Liquidations have been fully disclosed.

The following representations have been made in connection with the Spinoff:

- (p) The indebtedness, if any, owed by Controlled to Distributing immediately after the Distribution will not constitute stock or securities.
- (q) No part of the consideration to be distributed by Distributing to its shareholders will be received by any of Distributing's shareholders as a

- creditor, employee, or in any capacity other than that of a shareholder of Distributing.
- (r) In applying section 355(b)(2)(A) regarding the active conduct of a trade or business, Distributing will treat all members of its separate affiliated group (the “Distributing SAG”), as defined in section 355(b)(3)(B), as one corporation.
 - (s) In applying section 355(b)(2)(A) regarding the active conduct of a trade or business, Controlled will treat all members of its separate affiliated group (the “Controlled SAG”), as defined in section 355(b)(3)(B), as one corporation.
 - (t) The 5 years of financial information submitted on behalf of Distributing is representative of its present operations, and with regard to such operations, there have been no substantial operational changes since the date of the last financial statements submitted.
 - (u) The 5 years of financial information submitted on behalf of FSub, a member of the Controlled SAG, is representative of its present operations, and with regard to such operations, there have been no substantial operational changes since the date of the last financial statements submitted.
 - (v) Neither Business A nor control of an entity conducting Business A was acquired during the 5-year period ending on the date of the Distribution in a transaction in which gain or loss was recognized (or treated as recognized under Prop. Reg. § 1.355-3) in whole or in part. Throughout the 5-year period ending on the date of the Distribution, Distributing has been the principal owner of the goodwill and significant assets of Business A and Distributing will continue to be the principal owner following the Distribution.
 - (w) Neither Business B nor control of an entity conducting Business B was acquired during the 5-year period ending on the date of the Distribution in a transaction in which gain or loss was recognized (or treated as recognized under Prop. Reg. § 1.355-3) in whole or in part. Throughout the 5-year period ending on the date of the Distribution, FSub, a member of the Controlled SAG, has been the principal owner of the goodwill and significant assets of Business B and the Controlled SAG will continue to be the principal owner following the Distribution.
 - (x) Following the Distribution, Distributing and Controlled, directly or through its respective SAG, each will continue the active conduct of its business, independently and with its separate employees.

- (y) Following the Distribution, Distributing and Controlled each will have its own officers and employees. Two current directors of Distributing, one of whom is the chief executive officer of Distributing and the other of whom is an independent, non-executive director of Distributing, will continue to be directors of Distributing and will also be directors of Controlled. It is also expected that the independent, non-executive director of Distributing will serve as the chairman of Controlled's board of directors.
- (z) The Distribution will be carried out for the following corporate business purpose: to resolve capital expenditure constraints that prevent Business B from pursuing the business development strategies most appropriate for optimal growth and operation. The Distribution is motivated, in whole or in substantial part, by this corporate business purpose.
- (aa) The Distribution will not be used principally as a device for the distribution of the earnings and profits of Distributing, Controlled, or both.
- (bb) The total adjusted basis of the assets transferred by Distributing to Controlled in the Contribution will exceed the sum of (i) the total liabilities assumed (within the meaning of section 357(d)), if any, by Controlled and (ii) the total amount of money and other property (within the meaning of section 361(b)) received by Distributing from Controlled and transferred by Distributing to its creditors in pursuance of the plan of reorganization.
- (cc) The total fair market value of the assets transferred by Distributing to Controlled in the Contribution will exceed the sum of (i) the total amount of liabilities assumed (within the meaning of section 357(d)), if any, by Controlled, (ii) the amount of any liabilities owed to Controlled by Distributing, if any, that are discharged or extinguished in connection with the Spinoff, and (iii) the amount of any cash and the fair market value of any property (within the meaning of section 361(b)) received by Distributing from Controlled in connection with the Contribution.
- (dd) The fair market value of the assets of Controlled will exceed the amount of its liabilities immediately after the Contribution.
- (ee) The fair market value of the assets of Controlled will exceed Controlled's aggregate basis in those assets immediately after the Contribution.
- (ff) The liabilities, if any, assumed (within the meaning of section 357(d)) by Controlled in the Contribution and the liabilities, if any, to which the assets transferred in the Contribution are subject were incurred in the ordinary course of business and are associated with the assets being transferred.

- (gg) No property for which an investment credit allowed under section 47 will be claimed will be transferred by Distributing to Controlled in the Contribution.
- (hh) Except for indebtedness that may be created in the ordinary course of business or obligations incurred pursuant to the terms of the Transaction Agreements, no intercorporate debt will exist between the Distributing SAG and the Controlled SAG at the time of, or subsequent to, the Distribution.
- (ii) Immediately before the Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see Treas. Reg. §§ 1.1502-13 and 1.1502-14 in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; Treas. Reg. § 1.1502-13 as published by T.D. 8597).
- (jj) Immediately before the Distribution, Distributing will not have an excess loss account in the Controlled Stock (see Treas. Reg. § 1.1502-19).
- (kk) No indebtedness between the Distributing SAG and the Controlled SAG has been or will be settled or cancelled in connection with the Distribution other than (i) the settlement of intercompany loans and intercompany open account balances attributable to the normal business operations of the Distributing SAG and the Controlled SAG prior to the Distribution, (ii) the settlement of obligations incurred pursuant to the terms of the Transaction Agreements, and (iii) the FSub Debt Satisfaction.
- (ll) Except for certain continuing transactions under the Transaction Agreements, payments made in connection with continuing transactions, if any, between the Distributing SAG and the Controlled SAG will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (mm) No two parties to the Transaction are investment companies as defined in section 368(a)(2)(F)(iii) and (iv).
- (nn) For purposes of section 355(d), immediately after the Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing stock, that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the 5-year period (determined after applying section 355(d)(6)) ending on the date of the Distribution.
- (oo) For purposes of section 355(d), immediately after the Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50

- percent or more of the total combined voting power of all classes of Controlled Stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled Stock, that was either (i) acquired by purchase (as defined in section 355(d)(5) and (8)) during the 5-year period (determined after applying section 355(d)(6)) ending on the date of the Distribution or (ii) attributable to distributions on Distributing stock that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the 5-year period (determined after applying section 355(d)(6)) ending on the date of the Distribution.
- (pp) The Distribution is not part of a plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50 percent or greater interest (within the meaning of section 355(d)(4)) in Distributing or Controlled (including any predecessor or successor of any such corporation), taking into account the special rules of section 355(e)(3)(A).
 - (qq) Immediately after the Distribution (taking into account section 355(g)(4)), (i) neither Distributing nor Controlled will be a disqualified investment corporation (as defined in section 355(g)(2)), and (ii) no person will hold a 50 percent or greater interest in any disqualified investment corporation (as defined in section 355(g)(2)) immediately after the Distribution who did not so hold, directly or indirectly, such interest immediately before the Distribution.
 - (rr) Distributing and Controlled will equally pay expenses related to the Transaction, except for expenses arising from the IPO, which will be paid solely by Controlled. However, neither Distributing nor Controlled will pay any expenses incurred by its shareholders or creditors in connection with the Transaction.
 - (ss) Any payment of cash in lieu of fractional shares of Controlled Stock is solely for the purpose of avoiding the expense and inconvenience to Controlled of issuing and maintaining fractional shares and will not represent separately bargained-for consideration. It is intended that the total cash paid in the Distribution to shareholders in lieu of fractional shares of Controlled Stock will not exceed 1 percent of the total consideration that will be distributed in the Distribution. The fractional share interests of each Distributing shareholder will be aggregated, and it is intended that no shareholder will receive cash in an amount equal to or greater than the value of 1 share of Controlled Stock.
 - (tt) The Distributing Debt Retirement will occur as promptly as possible and will in no event occur more than 12 months after the date of the Distribution.

- (uu) The amount of the Distributing Public Debt to be paid with the Transferred Proceeds will not exceed the weighted quarterly average of the Distributing debt owed to unrelated third parties for the 12-month period ending on the close of business on the last full business day before the date on which Distributing's board of directors initially discussed the potential separation of Business A from Business B.

RULINGS

Based solely on the information submitted and the representations made, and conditioned upon Distributing's execution of the closing agreement attached hereto and made a part hereof, we rule as follow on the Liquidations:

- (1) Each Liquidation will qualify as a complete liquidation of the respective Liquidating Subsidiary under section 332 (section 332(b)).
- (2) Distributing will recognize no gain or loss on its deemed receipt of assets (section 332(a)).
- (3) Each Liquidating Subsidiary will recognize no gain or loss on its deemed distribution of assets to Distributing (section 337(a)).
- (4) Distributing's basis in each asset deemed to be received from a Liquidating Subsidiary will equal the respective Liquidating Subsidiary's basis in that asset immediately before the respective Liquidation (section 334(b)(1)).
- (5) Distributing's holding period in each asset deemed to be received from a Liquidating Subsidiary will include the period for which the asset was held by the respective Liquidating Subsidiary (section 1223(2)).
- (6) Distributing will succeed to and take into account the items of each Liquidating Subsidiary described in section 381(c), subject to the conditions and limitations described in sections 381, 382, 383, and 384 and the regulations thereunder (section 381(a), (b), and (c) and Treas. Reg. § 1.381-1).

Based solely on the information submitted and the representations made, and conditioned upon Distributing's execution of the closing agreement attached hereto and made a part hereof, we rule as follow on the Spinoff:

- (7) The Contribution together with the Distribution will qualify as a reorganization within the meaning of section 368(a)(1)(D). Distributing and Controlled each will be "a party to a reorganization" within the meaning of section 368(b).

- (8) Distributing will recognize no gain or loss on its receipt of Controlled Stock and the Section 361(b) Property, if any, in the Contribution (section 361(a), (b)(1)(A), and (b)(3), and section 357(a)).
- (9) Controlled will recognize no gain or loss on the Contribution (section 1032(a)).
- (10) Controlled's basis in each asset received in the Contribution will equal the basis of the asset in the hands of Distributing immediately before the Contribution (section 362(b)).
- (11) Controlled's holding period in each asset received in the Contribution will include the period during which the asset was held by Distributing (section 1223(2)).
- (12) The earnings and profits of FSub, to the extent attributable to Distributing under §§ 1.1248-2 or 1.1248-3 (whichever is applicable), that were accumulated in tax years of such foreign corporation beginning after December 31, 1962, and during the period in which such corporation was a CFC, will be attributable to such stock held by Controlled (section 1.1248-1(a)(1)).
- (13) Controlled will recognize no gain or loss on the IPO (section 1032(a)).
- (14) Distributing will recognize no gain or loss on the distribution of Controlled Stock in the Distribution (section 361(c)(1)).
- (15) Except to the extent required under section 897 with respect to foreign shareholders of Distributing who own or owned during the five years preceding the Distribution more than five percent of the fair market value of any class of Distributing stock (if any), Distributing's shareholders will recognize no gain or loss, and otherwise will include no amount in income, on their receipt of Controlled Stock in the Distribution (section 355(a)).
- (16) Except in the case of a Distributing shareholder who recognizes gain or loss under section 897, each Distributing shareholder's basis in a share of Distributing stock (as adjusted under Treas. Reg. § 1.358-1) will be allocated between the share of Distributing stock with respect to which the Distribution is made and the share of Controlled Stock received with respect to that share in proportion to their fair market values (Treas. Reg. § 1.358-2(a)(2)(iv)). If a Distributing shareholder that purchased or acquired shares of Distributing stock on different dates or at different prices is not able to identify which particular share of Controlled Stock (or portion thereof) is received with respect to a particular share of Distributing stock, the shareholder may designate which share of Controlled Stock is received with respect to a

particular share of Distributing stock, provided the designation is consistent with the terms of the Distribution (Treas. Reg. § 1.358-2(a)(2)(vii)).

- (17) Except in the case of a Distributing shareholder who recognizes gain or loss under section 897, each Distributing shareholder's holding period in a share of Controlled Stock received will include the shareholder's holding period in the share of Distributing stock with respect to which the Distribution is made, provided that the Distributing stock is held as a capital asset in the hands of the Distributing shareholder on the date of Distribution (section 1223(1)).
- (18) Earnings and profits of Distributing (if any) will be allocated between Distributing and Controlled in accordance with section 312(h) and Treas. Reg. §§ 1.312-10(a) and 1.1502-33(e)(3).
- (19) A shareholder who receives cash in lieu of fractional shares of Controlled Stock will recognize gain or loss measured by the difference between the basis of the fractional share received, as determined above, and the amount of cash received (section 1001). Any gain or loss will be treated as capital gain or loss, provided the fractional shares of stock would be held as a capital asset on the date of the Distribution (sections 1221 and 1222).
- (20) Payments made between Distributing and Controlled and their respective affiliates under the Transaction Agreements regarding liabilities, indemnities, or other obligations that (i) have arisen or will arise for a taxable period ending on or before the Distribution or for a taxable period beginning before and ending after the Distribution, and (ii) will not become fixed and ascertainable until after the Distribution, will be treated as occurring immediately before the Distribution (*see Arrowsmith v. Commissioner*, 344 U.S. 6, 73 S. Ct. 71, 97 L. Ed. 6, 1952-2 C.B. 136 (1952); Rev. Rul. 83-73, 1983-1 C.B. 84).

CLOSING AGREEMENT

In connection with the issuance of this ruling letter, a closing agreement is being entered into between the Internal Revenue Service and the taxpayer with respect to certain of those issues affecting its tax liability on the basis set forth above. This private letter ruling will become effective upon execution of the closing agreement.

CAVEATS

Except as expressly provided herein, no opinion is expressed about the tax treatment of the Transaction under other provisions of the Code or regulations, or about the tax treatment of any conditions existing at the time of, or effects resulting from, the Transaction not specifically covered by the above rulings. In particular, no opinion is

expressed regarding: (i) whether the Distribution satisfies the business purpose requirement of Treas. Reg. § 1.355-2(b); (ii) whether the Distribution is used principally as a device for the distribution of the earnings and profits of Distributing, Controlled, or both; (iii) whether the Distribution is part of a plan (or series of related transactions) under section 355(e)(2)(A)(ii); (iv) the consequences to any person under section 897 as a result of the transactions described above, including but not limited to (a) whether any gain is recognized under section 897 and (b) whether Distributing was at any time a United States real property holding corporation during the five-year period immediately preceding the date of the Distribution; or (v) the consequences under subpart F of any part of the Transaction. This letter ruling will become effective upon the execution of the closing agreement.

PROCEDURAL STATEMENTS

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter must be attached to the federal income tax returns to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching to the return a statement that provides the date and control number of this ruling letter.

Pursuant to the power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Isaac W. Zimbalist
Isaac W. Zimbalist
Senior Technical Reviewer, Branch 5
Office of Associate Chief Counsel
(Corporate)

cc: